



Law relating to contempt of court in India: A critical study

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Abstract

Contempt of Court is a matter concerning the fair administration of justice. The provisions related to the power of Courts to punish for contempt, the purpose of which is to maintain the dignity of Courts and also to assert impartial and unobstructed administration of justice, are included in the Indian Constitution. A provision of independence of judiciary has also been made in Indian Constitution for the enforcement of fundamental rights. The contempt law secures public faith and confidence in the judicial process and provides the sanction for any conduct which is likely to destroy such faith and confidence. Through this contempt law the Courts performs its function of proper administration of justice and safeguard the rule of law. The judiciary uses this law to enforce its authority.

Keywords: administration of justice, prima-facie, scandalize, instrumentalities constitutional limits, supremacy of judiciary, harmonisation

Introduction

According to the Indian Constitution, the people of India are considered supreme. It means that the people are the masters and all agencies and instrumentalities of the State are servants of the people in this country. It further indicates that all authorities i.e. legislators, bureaucrats, police, army etc. including the Courts, are the servants of the people. In this way, if the servant does not act properly, the master has the right to criticise the servant. It is, no doubt, true that the fundamental right to freedom of speech and expression and right to personal liberty provided under the Indian Constitution are important, but the confidence of the people on the Courts is also important. It is essential for a civilized society that the Indian judiciary must be greeted with proper respect and dignity. An act amounts to contempt of Court if it makes the functioning of the judges impossible or difficult, otherwise it does not amount to contempt of Court even if it amounts to harsh criticism. The origin of our contempt law can be traced from British rule. But during the British rule, India was neither free nor a democratic country. Then how can the laws of those days be applied today on Indian situation. The only situation where the Court would have to take some action is when his work as a judge is made impossible. There should be certainty in the law and not uncertainty. There are two reasons for the uncertainty in the law of contempt of Court. In the Contempt of Courts Act, 1971, the term "Contempt of Court" and "scandalize" have not been defined. Secondly, there is no definition of what constitutes scandalizing the Court, or what prejudices or interferes with the course of justice. There should be an appropriate balance between judicial protection and judicial accountability. The respect for judiciary is necessary for effective administration of justice and the rule of law. But this respect should not be enforced, it must only be earned. The best shield of a judge is his reputation of integrity and impartiality. Hence, in a democratic country there is no need for judges to justify their authority or display majesty. Their authority comes from the public faith and confidence and this, in turn, will be an outcome of their own conduct, their integrity, impartiality and simplicity. An upright judge will

hardly ever use the contempt power in his judicial career. The contempt law can be made certain once it is accepted that the aim of the contempt power is not to uphold the dignity of the judge but only to enable the Court to work properly. The contempt power should only be used in an exceptional situation when it becomes impossible and difficult for the Court to work. The recent contempt law the Contempt of Courts Act, 1971 is uncertain, arbitrary and unreasonable. The present study has explored that the present law the Contempt of Courts Act, 1971 is not appropriate to deal with interference with administration of justice and to retain the confidence of the public in the Indian judiciary. The present contempt law has not been in tune with our constitutional objectives.

It has been found that there is no definition of contempt of Court in the Contempt of Courts Act, 1971. Because of the term contempt of Court has not been defined in the Act, the legislature has not been able to provide clear nature and scope of the contempt of Court as an offence. It means that the contempt law is discretionary in nature and this has provided the discretionary power to the judges not to take contempt proceedings on its merit, but on its own discretion. So this can never be a healthy sign for democratic country like India. The study further shows that by not defining the term "contempt of Court" how can one divide a term into civil and criminal contempt. Therefore, the statute has tried to create a difference between two without any logic and has provided a different process for a single offence. The Contempt of Courts Act, 1971 provides that "contempt of Court" means contempt of Court. Then why there is distinction between civil and criminal contempt under the Act which is almost unnoticed and how can one decide between the civil and criminal contempt as there is no specific criteria to determine the same under the Act of 1971. It has also been found that the current legislation the Contempt of Courts Act, 1971 has certain terms and words that have unclear definition like the word "scandalizing" which can be manifested in different ways. Sometimes it has been found that the judges have taken fair and true comments as contempt against judges. This is only because

the law is not specific and is uncertain. But it is true that there is a distinction between the dignity of the Court and personal dignity of the judge and always dignity of the Court needs to be protected and the personal dignity of the judge which is actually a defamation and not seen as a contempt. The personal dignity with reference to contempt of Court shall always be taken in exceptional cases or in matters where there is *prima-facie* evidence of lowering the dignity of the individual, with him being the part of the Court. The judges instead of taking a humanistic view apply the law in a very harsh and strict manner in a civil contempt, where a person due to the ignorance of law or mistaken belief, without even any intention sometimes do not observe the direction of the Court and their ignorance however innocent it may be punished by law taking into consideration the peculiar circumstances of a country like India. The present study reveals that the concept of contempt of Court is not meant to protect the judges personally but to protect the honour of the Court, which must never be allowed to interfere with so as to make the ordinary man feel that the glory of justice is kept pure and impartial. In using the powers given to them under the Contempt of Courts Act, 1971, the judges must not work under fear or personal bias etc.

It has been seen in this study that in some cases the judges initiate a contempt proceeding with anger and pre-planned mind that shall never be good in the interest of justice. The nature of procedure in contempt proceedings is seen as summary so it must always be used in certainty. The study has explored that the rigidity in the contempt proceeding may lead to less persons coming out for evidences with the truth. A person getting afraid of contempt proceeding against them, is best of opinion the main cause of the reluctance to come forward for evidences of a particular trial. The study factually, makes the point evident that Indian history till the period of the British era has no reference to the contempt of Court being committed by the press. The reason was that the press firstly had been very responsible of its role as a custodian of rights and liberties of the people. Secondly, it had so much respect towards the Court of justice that even probable instances of contempt of Court were mostly taken with the judges and had not been published in public. Similarly, the judges had a sympathetic view towards the concerns of the media persons and mostly accepted what the press had asked to do. This reconciliation of interest between the judiciary and the press is the endorsement of the concept of free speech with reference to contempt of Court in India. Such kind of evidences is nowhere found in any of the great civilization of ancient India in particular and even in modern legal systems in general. This golden era of responsible press remained from the epic period to the British era.

The law of contempt of Court is basically intended to safeguard the interests of administration of justice, which must necessarily be fearless, impartial, respectful and upright. The study of the subject is of much practical importance in a democratic society like India where freedom of speech and expression is granted by the Constitution as a fundamental right. It is possible that abuse of these freedoms may affect the impartiality and authority of the Court and become detrimental to its respect and dignity. The contempt law as developed and interpreted by the Courts has taken a very disapproved approach and has almost become non-functional in view of its destroy the

fundamental right of freedom of speech and expression in all as extended and expanded form enshrined in the Constitution of India. In countries, where the idea of contempt of Court originated, considerable dilution and amendments have been witnessed in the law due to the rise of democratic aspirations and expectations, establishment of various democratic intuitions and reinforcement of human rights with emphasis on human autonomy and dignity. In India on the other hand, the law of contempt of Court has taken a detractive approach.

Suggestions to Make the Contempt of Courts Act, 1971 More Viable, Effective and Result Orientated

It has been seen in this study that there are various shortcomings in the present contempt of Court law in India. The study has revealed various drawbacks and unsatisfactory state of affairs with reference to the contempt of Court law. The aim of the Contempt of Courts Act, 1971 is to judge fairly without any disturbances. This will create confidence among the citizens. This power given to the Courts should be used wisely and punctually. This Act maintains the respect and dignity of the judiciary and protects it from any disturbances. It is true that the present Contempt of Courts Act, 1971 is imperative with reference to the concept of delivering justice and just because of this Act the justice is delivered very quickly and fast. But still there are many loopholes in the present contempt law. The following are some suggestions to make the Contempt of Courts Act, 1971 more viable, effective and result orientated.

The law of contempt of Court is uncertain, arbitrary and unreasonable because under the Act, it all depends upon the discretion of the judge whether the act of the person is to be considered as contempt of Court or not. Therefore, it is essential that a proper criteria should be set up to find out whether the act of the contemnor comes within the definition of contempt of Court under the Contempt of Courts Act, 1971 and some safeguards are also needed so that the Court cannot act arbitrarily.

- Before the delivery of the final judgment at least a minimum cooling off period should be provided, so that the anger that might influence the Court's judgment may cool down.
- All the contempt cases should be disposed of within a period of six months from the date of the institution of the case. There should be provision in the Act related to this.

In the era of information technology, the contempt law should be amended. For example, if a person commits the offence of contempt of Court through social media or through any online mode like Face book, twitter, video conferencing etc., as in recent *Prashant Bhushan* case; then the person should also be liable for cyber crimes like other cyber -crimes of cheating, fraud, defamation, stalking etc. through social media or through any online mode and even separate provision in this regard should be added in the contempt law and cyber law.

1. Contempt power is a *brahmastra* where the judge acts as complainant, prosecutor and judge all rolled into one. There should be a provision in the Contempt of Courts Act, 1971 that the same judge that made the allegation against a person of acting in contempt should not hear the contempt case because it is the principle of natural justice that no one could be the judge in his own case.

2. The general principal of criminal law in India that the accused is presumed to be innocent unless proven guilty should be applicable in the contempt proceedings.
3. It is now well recognized that the classification into civil and criminal contempt is not based on any sound rationale. Whether the contempt is civil or criminal, what is affected is due administration of justice. It is necessary that Court orders or undertakings given to Courts are properly complied with. Instead of dealing such instances as contempt of Court, there are mechanisms in the Civil Procedure Code to enforce Court orders or undertakings given to the Court. Where such mechanisms are not adequate, provisions may be strengthened so that the orders and undertakings are properly complied with.
4. The Contempt of Courts Act, 1971 may specifically provide that the offence under the Act is attracted only if the act does not amount to an offence under the Indian Penal Code, 1860.
5. The maximum punishment for the offence of contempt of Court should be enhanced from six months to one year, so that it has deterrent effect in the society.
6. There should be strict punishment for government officials as compared to general public, who commit the offence of contempt of Court, as they are working on very responsible positions being the servants of the State. The public servants in India ensure the smooth functioning of all aspects of the government. Moreover, they have a duty to respect the Courts and to enforce the orders, directions etc. of the Courts.
7. The term „contempt of Court“ and word „scandalize“ must be defined in the Contempt of Courts Act, 1971 to remove the ambiguity in dealing with contempt cases.
8. The concept of apology should be removed in matters of contempt of Court based on ignorance, as ignorance of law is of no excuse“ is the fundamental principle of our criminal law.
9. Truth should always be considered as defence in any contempt proceeding rather than being left to the discretion of the Court as has been done by the amendment of 2006.
10. In case of procedural matters, under Section 23 of the Contempt of Courts Act, 1971, there is uncertainty, as it gives exclusive powers to the Supreme Court and High Courts to make rules as to the procedure to be adopted in contempt proceedings. It is suggested that the Supreme Court should be empowered to make rules in relation to the procedure initiated by the Supreme Court and by the High Courts.
11. At present a criminal proceeding is treated as pending and publication regarding criminal proceeding is treated as contempt where it related to the commission of an offence when the charge sheet is filed or when the Court issues summons or warrant, as the case may be, against the accused. Thus, before the filing of charge sheet, any type of media trial cannot be treated as contempt of Court. A change of law in this regard is necessary in tune with the recommendations of the Law Commission of India in its 200th report and if there is any media trial before the filing of charge sheet that should be treated as contempt of Court.
12. The summary procedure to deal with contempt cases may be included in the Act as separate provision to prevent harassment by way of cost, inconvenience and time to the contemnor.
13. The contempt power should only be used in exceptional situations where without using it, it becomes impossible for the Court to function.
14. For fixing liability on the High Court and Supreme Court judges for the contempt committed by them against their own Courts, appropriate provisions may be included in the Act.
15. There should be provision in the Contempt of Courts Act, 1971 related to false implication and the responsible judge should be punished under the Act.
16. The Act should be used as the last resort when the judge has a very reasonable basis that the words or acts of the contemnor results to contempt.

Suggestions to Balance between Freedom of Speech and Expression and Contempt of Court

The Indian Constitution under Article 19(1) (a) gives the fundamental right of freedom of speech and expression to all its citizens. But the Contempt of Courts Act, 1971 and Articles 129 and 215 under the Indian Constitution give the power of contempt of Court to the judiciary, and this power restricts the freedom granted by Article 19(1)(a). How are these provisions to be reconciled? If we say that India is a democratic country and that the people are supreme, the reconciliation can only be affected by treating the fundamental right of freedom of speech and expression to be primary, and the power of contempt to be subordinate in the process. In this way, the people have the fundamental right to freedom of speech and expression and also have the right to criticize judges, but they should not act to the extent of making the work of the judges impossible or difficult. It is no doubt true that the fundamental right to freedom of speech and expression and right provided under the Indian Constitution are important, but the confidence of people in the Court is also important. It is essential for civilized society that the Indian judiciary must be greeted with proper respect and dignity. The following are the suggestions to maintain balance between fundamental right of freedom of speech and expression and contempt of Court:

1. The fundamental right of freedom of speech and expression guaranteed under Article 19(1) (a) has to be carefully and cautiously exercised so as to avoid interference in administration of justice.
2. There should be a balance between contempt of Court and fundamental right of freedom of speech and expression mentioned under Article 19(1) (a) in Indian Constitution. This freedom of speech and expression and power of contempt are elemental for a democratic set up, both should be exercised in a balanced way for the benefit of the public.
3. The fundamental right of the citizens of freedom of speech and expression under Article 19(1) (a) should be treated primary, and the power of contempt to be secondary. It means that the people are free to criticise judges, but they should not go to the extent of making the functioning of the judges difficult. The power of contempt does not provide the judges supreme position but its object is to maintain balance between the freedom of speech and administration of justice so that to secure the confidence of the public in the fair and impartial administration of justice. If anybody tried to

- disturb this balance and scandalize the proceedings of Court in bad faith he must be punished for that act.
4. Freedom of press which is impliedly included in Article 19(1) (a) of the Indian Constitution is an important organ for the efficient working of any democratic society and therefore, steps should be taken to this way for its proper implementation and there should not be any unreasonable restrictions on the press.
 5. Those who commit contempt of Court while exercising their fundamental right of freedom of speech and expression should be dealt with a lighter punishment.
 6. Rules relating to contempt of Court should not be interpreted inconsistently with the guarantees of freedom of speech and expression mentioned in Indian Constitution. This disproportionate restriction on freedom of speech and expression cannot be justified.

There are also required some improvement in the present position of contempt law in India and maintain independence of judiciary. Firstly, when the act of any person lowers the dignity of the Court then there should be a separate enquiry made to decide the authenticity of the allegation rather than straight away sending the matter to be tried by the same judge. Secondly, the Courts should have a clear image about the distinction of contempt of Court and contempt of judge. Thirdly, the contempt power should be used as shield for the protection of the Courts. Fourthly, there should be a panel of the senior judges to check the misuse of contempt power. Fifthly, in case of accusation of motive against the judge, it must always be treated as criminal defamation and not as contempt of Court. Sixthly, if the judge feels that the act lowers the dignity of Court, then it can also be referred for a second opinion to some committee or any other judicial opinion can be taken into consideration. Seventhly, the use of this contempt power in anger and with pre-planning has not helped to maintain the respect of Indian judiciary, but has an adverse effect on it. Therefore, the judges punishing for contempt of Court should always take heed of this power with care and caution.

The very purpose of the Contempt of Courts Act, 1971 is to maintain due administration of justice. The protection is given to judges only for the reason that they are agencies and instrumentalities of administration of justice. In this regard the judiciary may keep in mind that due administration of justice is not the concern of judiciary alone, but it is the concern of everyone who believes in democracy and the Constitution. The constitutional provisions i.e. Articles 129 and 215 confer contempt powers of Courts of record on the Supreme Court and the High Courts, so that the Courts may keep in mind these Articles to ensure that they are exercising the power within constitutional limits.

Analysis of contempt law, bring out that because of the reason that the terms contempt of Court and scandalize have not been defined, the legislature has not been able to provide clear depiction of the nature and the scope of the contempt of Court as an offence. The word scandalizes needs to be defined in the Act so that the one can identify that whether his action or conduct amounts to scandalize the Court. Under the present contempt law it all depends upon the discretion of the Court.

It has been seen that there is also a need that proper criteria should be set up to find out whether the act of the contemnor comes within the definition of „contempt of Court“ under the Contempt of Courts Act, 1971. It is felt that some safeguards are also needed so that the Court cannot act arbitrary because the law of contempt of Court is uncertain, arbitrary and unreasonable and it all depend upon the discretion of the judge that whether the act of the person considered as contempt of Court or not, Under the contempt law it is the discretion of the judge that whether the act of any person considered as contempt of Court or not. So it is necessary that there should be some criteria to find out that whether the act of the contemnor is contempt or not. Firstly, there is need to provide the exhaustive definition of contempt of Court under the Act of 1971. Secondly, there is also the need of the time that there must be specific grounds of contempt of Court on the basis of which the Court can determine that whether the act of the person is contempt of Court or not. It is the fundamental principle that no one should be the judge in his own case and this is also the rule of a fair trial. It is, therefore suggested that a particular Bench of the Court that accuses a person of acting in contempt should not hear the contempt case and pronounce a verdict. The contempt case should be dealt with by other judges.

It is suggested that the contempt power should only be used in exceptional situations where without using it, it becomes impossible for the Court to function. For example if the contemnor runs away with Court file or uses abusive language against the judge, then in that case it would be impossible for the Court to work because it is direct interference in the functioning of the Court and in that situation it is necessary for the Court to use contempt power. Fair criticism of judge by the accused should not be considered as contempt of Court. The present contempt law provides that truth can be a defence, if it is in public interest. However, what is public interest would be decided by the Court and it totally depends upon the discretion of the Court. Therefore, it is suggested that truth should always be considered and encouraged as defence in any contempt proceeding under the contempt law. In other words, the law of contempt is the protector of the seat of justice more than the person sitting on the seat.

It is necessary for delivering justice that Court orders or undertakings given to Courts are properly complied with. Instead of dealing such instances as contempt of Court, there are mechanisms in the Civil Procedure Code, 1908 to enforce Court orders or undertakings given to the Court. Where such mechanisms are not adequate, provisions may be strengthened so that the orders and undertakings are properly complied with. Civil contempt may not be considered as an alternative in this regard. However, there may be situations where wilful disobedience of orders and breach of undertakings lead to interference with administration of justice and therefore may also be treated as contempt of Court.

In order to have deterrent effect for committing contempt of Court, the maximum punishment should be enhanced so that the person may not dare to commit it. The maximum punishment for contempt of Court should be extended to one year. A contempt of Court should be considered serious where it creates a risk to the justice delivery system or interferes in the administration of justice. The presence or absence of an intention to interfere with the due

administration of justice should be considered in deciding penalty. The presence or absence of any prior punishment for contempt may also be considered at any time.

Conclusion

In contempt cases the burden of proof should be on the judge who accuses the contemnor with contempt of Court. Therefore, a person accused of crime should not be considered guilty until proven and that places an equal burden on the accuser. There should also be provision in the Contempt of Courts Act, 1971 related to false implication and the responsible judge should be punished under the Act, in order to discourage fake cases. This will help build and strengthen public faith in the judicial system. In today's democratic era, there is need that fair and true criticism of the judge by the accused should not be considered as contempt of Court. The best course of action for a judge is to ignore baseless criticism but on the other hand he must pay heed to honest and correct criticism. He should have enough broad minds to brush aside all baseless comments without being concerned or bothered. It is also necessary that the Courts should have a clear image about the distinction of contempt of Court and contempt of judge. The law of contempt is aimed at keeping the administration of justice pure. The honour of the Court should be maintained at all costs. The contempt jurisdiction which is of special nature should be exercised sparingly. Therefore, in the modern time there is need to make a balance between the fundamental right of freedom of speech and expression and contempt law otherwise it would create a disturbance between the harmonisation of fundamental rights covered under the Indian Constitution and supremacy of judiciary.

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